

# **EXHIBIT I**

1 IN THE UNITED STATES DISTRICT COURT FOR THE  
2 NORTHERN DISTRICT OF OKLAHOMA

3 UNITED STATES OF AMERICA,

4 Plaintiff,

5 and

6 OSAGE MINERALS COUNCIL,

7 Intervenor-Plaintiff,

8 vs.

Case No. 14-CV-704-GFK-JFJ

9 OSAGE WIND, LLC;  
10 ENEL KANSAS, LLC; and  
11 ENEL GREEN POWER NORTH  
AMERICA, INC.,

12 Defendants.

13 VIDEO ZOOM DEPOSITION OF JOHN H. PFAHL  
14 TAKEN ON BEHALF OF THE PLAINTIFF  
15 ON MARCH 10, 2021, BEGINNING AT 10:01 A.M.  
16 IN TULSA, OKLAHOMA

17 APPEARANCES

18 On behalf of the PLAINTIFF:

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25 REPORTED BY: SUSAN K. McGUIRE, CSR, RPR

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<p>1 Of counsel for the Plaintiff:</p> <p>2 Charles R. Babst, Jr.</p> <p>3 Senior Attorney</p> <p>4 Tulsa Field Solicitor's Office</p> <p>U.S. Department of the Interior</p> <p>7096 East 33rd Street</p> <p>Tulsa, OK 74145</p> <p>(918) 669-7902</p> <p>6 On behalf of the DEFENDANTS:</p> <p>7 Ryan A. Ray</p> <p>NORMAN WOHLGEMUTH CHANDLER</p> <p>JETER, BARNETT &amp; RAY, P.C.</p> <p>401 S. Boston Ave.</p> <p>3900 Mid-Continent Tower</p> <p>Tulsa, OK 74103</p> <p>(918) 583-7571</p> <p>rar@nwcjlaw.com</p> <p>12 Sarah M. Stevenson</p> <p>Dominic A. Martinez</p> <p>MODRALL SPERLING, ROEHL,</p> <p>HARRIS &amp; SISK, P.A.</p> <p>500 Fourth St. NW, Suite 1000</p> <p>Albuquerque, New Mexico 87103</p> <p>(505) 848-1800</p> <p>sarah.stevenson@modrall.com</p> <p>dam@modrall.com</p> <p>17 On behalf of the INTERVENOR-PLAINTIFF:</p> <p>18 Mary Kathryn Nagle</p> <p>Wilson K. Pipestem</p> <p>Jennifer Baker</p> <p>PIPESTEM &amp; NAGLE, P.C.</p> <p>401 S. Boston Ave., Suite 2200</p> <p>Tulsa, OK 74103</p> <p>(918) 936-4705</p> <p>mknagle@pipestemlaw.com</p> <p>wkpipestem@pipestemlaw.com</p> <p>jbaker@pipestemlaw.com</p> <p>23 Megan Beauregard</p> <p>Associate General Counsel</p> <p>Enel Green Power North America</p> <p>25 ALSO PRESENT: Gabe Pack, Videographer</p>	<p>Page 2</p> <p>1 VIDEOGRAPHER: This is a videotaped</p> <p>2 deposition of John Pfahl, in the matter of the United</p> <p>3 States and Osage Minerals Council versus Osage Wind,</p> <p>4 on March 10th, 2021. We are on the record at 10:01</p> <p>5 a.m.</p> <p>6 Will Counsel please state your appearances</p> <p>7 for the record.</p> <p>8 MS. McCLANAHAN: I'll start. I'm Cathy</p> <p>9 McClanahan for the United States. I have Charles</p> <p>10 Babst here, as well, of counsel. He's with the</p> <p>11 Department of Interior.</p> <p>12 MS. NAGLE: Mary Kathryn Nagle for the Osage</p> <p>13 Minerals Council, Intervenor-Plaintiff. With me I</p> <p>14 also have my partner, Wilson Pipestem, from Pipestem</p> <p>15 Law, as well as Jennifer Baker from Pipestem Law.</p> <p>16 MR. RAY: Good morning. Ryan Ray for all</p> <p>17 defendants, Osage Wind, LLC; Enel Green Power, North</p> <p>18 America, Incorporated; and Enel Kansas, LLC.</p> <p>19 THE COURT REPORTER: Mr. Pfahl --</p> <p>20 MS. STEVENSON: This is Sarah Stevenson, I'm</p> <p>21 also here for defendants, along with my colleague,</p> <p>22 Dominic Martinez.</p> <p>23 VIDEOGRAPHER: The court reporter will now</p> <p>24 swear in the witness.</p> <p>25 * * * * *</p>																																												
<p>1 CONTENTS</p> <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left; width: 30%;">Exhibit</th> <th style="text-align: right; width: 70%;">Page</th> </tr> </thead> <tbody> <tr> <td>1 SRK Consulting Report</td> <td style="text-align: right;">12</td> </tr> <tr> <td>2 2011 RMT Report</td> <td style="text-align: right;">25</td> </tr> <tr> <td>3 Tribal Resolution</td> <td style="text-align: right;">28</td> </tr> <tr> <td>4 Westlaw 25 CFR 214.10</td> <td style="text-align: right;">32</td> </tr> <tr> <td>5 Osage Wind 12246 Purchase Order</td> <td style="text-align: right;">39</td> </tr> <tr> <td>6 Change Order</td> <td style="text-align: right;">59</td> </tr> <tr> <td>7 Tenth Circuit Opinion</td> <td style="text-align: right;">60</td> </tr> <tr> <td>8 Email 5-15-14</td> <td style="text-align: right;">156</td> </tr> <tr> <td>9 Article</td> <td style="text-align: right;">202</td> </tr> <tr> <td>10 Geological Survey</td> <td style="text-align: right;">211</td> </tr> </tbody> </table> <p>6 EXHIBITS</p> <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left; width: 30%;">Exhibit</th> <th style="text-align: right; width: 70%;">Page</th> </tr> </thead> <tbody> <tr> <td>1 SRK Consulting Report</td> <td style="text-align: right;">12</td> </tr> <tr> <td>2 2011 RMT Report</td> <td style="text-align: right;">25</td> </tr> <tr> <td>3 Tribal Resolution</td> <td style="text-align: right;">28</td> </tr> <tr> <td>4 Westlaw 25 CFR 214.10</td> <td style="text-align: right;">32</td> </tr> <tr> <td>5 Osage Wind 12246 Purchase Order</td> <td style="text-align: right;">39</td> </tr> <tr> <td>6 Change Order</td> <td style="text-align: right;">59</td> </tr> <tr> <td>7 Tenth Circuit Opinion</td> <td style="text-align: right;">60</td> </tr> <tr> <td>8 Email 5-15-14</td> <td style="text-align: right;">156</td> </tr> <tr> <td>9 Article</td> <td style="text-align: right;">202</td> </tr> <tr> <td>10 Geological Survey</td> <td style="text-align: right;">211</td> </tr> </tbody> </table> <p>14 STIPULATIONS</p> <p>15 It is stipulated that the deposition of</p> <p>16 JOHN H. PFAHL may be taken on MARCH 10, 2021, pursuant</p> <p>17 to agreement and in accordance with the Federal Rules</p> <p>18 of Civil Procedure before Susan K. McGuire, CSR, RPR.</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	Exhibit	Page	1 SRK Consulting Report	12	2 2011 RMT Report	25	3 Tribal Resolution	28	4 Westlaw 25 CFR 214.10	32	5 Osage Wind 12246 Purchase Order	39	6 Change Order	59	7 Tenth Circuit Opinion	60	8 Email 5-15-14	156	9 Article	202	10 Geological Survey	211	Exhibit	Page	1 SRK Consulting Report	12	2 2011 RMT Report	25	3 Tribal Resolution	28	4 Westlaw 25 CFR 214.10	32	5 Osage Wind 12246 Purchase Order	39	6 Change Order	59	7 Tenth Circuit Opinion	60	8 Email 5-15-14	156	9 Article	202	10 Geological Survey	211	<p>Page 3</p> <p>1 WHEREUPON,</p> <p>2 JOHN H. PFAHL</p> <p>3 after having been first duly sworn, deposes and says</p> <p>4 in reply to the questions propounded as follows,</p> <p>5 to-wit:</p> <p>6 DIRECT EXAMINATION</p> <p>7 BY MS. McCLANAHAN:</p> <p>8 Q. All right. I'll ask the witness to state</p> <p>9 his name and spell it for the court reporter.</p> <p>10 A. Sure. My name is John Holland Pfahl.</p> <p>11 That's J-O-H-N, H-O-L-L-A-N-D, P-F-A-H-L.</p> <p>12 THE COURT REPORTER: I need him to speak up.</p> <p>13 Q. (BY MS. McCLANAHAN) And if you could</p> <p>14 possibly either turn your microphone up, or you speak</p> <p>15 up. It's just a little difficult for us to hear when</p> <p>16 you are talking.</p> <p>17 A. Yeah. Give me one second. I -- we're using</p> <p>18 the conference room audio system, so I've got to go</p> <p>19 over there to turn the settings on the microphone.</p> <p>20 Q. Okay. Okay. Sure.</p> <p>21 VIDEOGRAPHER: Do you want to take a break?</p> <p>22 MS. McCLANAHAN: No.</p> <p>23 VIDEOGRAPHER: Okay.</p> <p>24 THE WITNESS: Okay. It looks like the</p> <p>25 microphone in the room is maxed out, so I'll just try</p>
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<p>1      A. Yes, that is correct.</p> <p>2      Q. And you think that's a fair estimate of the 3 density of limestone in this area, generally; is that 4 correct?</p> <p>5      A. Yes, I do.</p> <p>6      Q. Does density have anything to do with the 7 decision to blast or not blast in order to excavate?</p> <p>8      A. No, it does not.</p> <p>9      Q. To convert 63,180 cubic yards to tons, you 10 first multiplied 155 pounds per cubic foot by 27; is 11 that right?</p> <p>12     A. No. You would have divided it by 27. Or, 13 sorry, pounds per -- sorry. So, you first divide 14 it -- I would have to actually write this out, this 15 equation, to go from a pounds per cubic foot to tons 16 per cubic yard. My apologies there. If you'd like, I 17 can think about it for a second and give you the full 18 way of approaching it.</p> <p>19     Q. Okay. So, did you conclude that there were 20 264,000 -- or, I'm sorry, 264 million pounds of 21 limestone?</p> <p>22     A. I don't have the value or the volume -- 23 sorry, the mass in pounds. I have it in tons. So I 24 converted the 155 pounds per cubic feet to 2.1 tons 25 per cubic yard, and applying that against the 63,180</p>	<p>Page 26</p> <p>1      Exhibit 21 is a tribal resolution regarding the APAC 2 lease. I'm going to ask that that be marked and 3 entered as Exhibit -- Plaintiff's Exhibit 3 here.</p> <p>4      Do you have that document in front of you?</p> <p>5      A. Exhibit 21?</p> <p>6      Q. It's attached to your report as Exhibit 21, 7 yes.</p> <p>8      A. Yes, I do have it.</p> <p>9      Q. And is this one of the documents you relied 10 upon to establish that .50 cents per ton of limestone 11 in 2012?</p> <p>12     A. Yes, that is correct.</p> <p>13     Q. Okay. So given that the limestone in 14 question that we're talking about in this case was 15 excavated in 2014, it's your opinion that the value of 16 the limestone that was taken by Osage Wind from the 17 estate during construction was .52 cents a ton; is 18 that correct?</p> <p>19     MR. RAY: Object to the form. You can 20 answer.</p> <p>21     THE WITNESS: Yeah, that is correct. So the 22 royalties were escalated at that time. Again, I 23 looked at other leases as well, and they had a .1 cent 24 per year escalation. So the .50 cents in 2012 25 escalated to .52 cents in 2014.</p>
<p>Page 27</p> <p>1      cubic yards, came up with a paid value of 132,678 tons 2 of limestone.</p> <p>3      Q. Okay. Okay. I think -- we both got there. 4 My 264 million were divided then by 2,000 to get to 5 tons, and that's the same answer that you have, 6 132,678 tons; correct?</p> <p>7      A. Yeah, I'll have to take your word on that. 8 Again, I don't have the calculation and all the 9 interim steps in front of me, but if we're getting to 10 the same point, that sounds like the right answer.</p> <p>11     Q. Okay. And it's your opinion that the total 12 value of the 132,678 tons of limestone that was 13 excavated would be \$68,993. And I'm excluding 14 interest right now.</p> <p>15     A. So, yes, \$68,993, valued at the time that it 16 was mined.</p> <p>17     Q. And you base this value off the royalty rate 18 that's contained in a limestone lease to APAC Central 19 Quarry; is that right?</p> <p>20     A. That's right. I checked the leases on a 21 couple of the quarries on the OMC's mineral estate, 22 and they were consistent with that value. So that was 23 the value at the time for limestone being mined within 24 the county based on those leases.</p> <p>25     Q. Okay. I think attached to your report as</p>	<p>Page 29</p> <p>1      Q. (BY MS. McCLANAHAN) So, in this regard, you 2 believe that the value of a lease from the OMC, as 3 contemplated by the Tenth Circuit, would have been 4 \$68,993, and, again, we're not talking about interest 5 right now; is that correct?</p> <p>6      MR. RAY: Object to the form.</p> <p>7      THE WITNESS: So, yeah. My opinion, the 8 value of the mineral mined to the OMC would have been 9 \$68,993 at the time.</p> <p>10     Q. (BY MS. McCLANAHAN) Okay. So limestone was 11 not the only mineral that was excavated during the 12 construction; is that right?</p> <p>13     A. That is correct.</p> <p>14     Q. Do you agree that other minerals were 15 excavated?</p> <p>16     A. I agree that other minerals were excavated.</p> <p>17     Q. Clay and shale were also excavated during 18 the construction; is that correct?</p> <p>19     A. Yes, that is correct.</p> <p>20     Q. And do you agree that clay and shale are 21 considered mineral resources?</p> <p>22     A. I do not believe that clay and shale meet 23 the definition of being mined. It was outlaid by the 24 Tenth Circuit court.</p> <p>25     Q. Okay. But that wasn't my question. Do you</p>

<p>1 copper, lead, zinc, coal, and asphaltum, the lessee 2 shall pay quarterly a royalty of 10 percent of the 3 value at the nearest shipping point of all ores, 4 metals, or minerals marketed.</p> <p>5       <b>Did I read that correctly?</b></p> <p>6       A. Yes, I believe so.</p> <p>7       <b>Q. So could clay and shale be considered</b> 8       <b>minerals, other than gold, silver, copper, lead, zinc,</b> 9       <b>coal and asphaltum?</b></p> <p>10      A. Yes.</p> <p>11      MR. RAY: Object to the form.</p> <p>12      <b>Q. (BY MS. McCLANAHAN) Do you know if -- when</b> 13     <b>someone enters a lease with the Osage Minerals Council</b> 14     <b>to mine clay or shale from the mineral estate, do you</b> 15     <b>know whether or not this regulation applies?</b></p> <p>16      MR. RAY: Object to the form.</p> <p>17      THE WITNESS: I do not know how the OMC 18     takes into account this regulation when they set their 19     leases. It's clear that they didn't follow it 100 20     percent, because the limestone leases that they set at 21     the time do not use the 10 percent royalty. So I 22     don't know where else they diverge from this.</p> <p>23      <b>Q. (BY MS. McCLANAHAN) So we're -- again,</b> 24     <b>we're having a little bit of trouble understanding</b> 25     <b>you, if you could, maybe, put your hands down and just</b></p>	<p>Page 34</p> <p>1 have been important for your opinion, in forming an 2 opinion in this case, to know whether or not this 3 regulation applies?</p> <p>4       MR. RAY: Object to the form.</p> <p>5       THE WITNESS: I think what is most important 6     is what the actual market rates were at the time, and 7     what was established. Those seem to divert from this. 8     So, I defer to what was actually being done instead of 9     this regulation. I'm sorry, just to --</p> <p>10      <b>Q. (BY MS. McCLANAHAN) And if I understand --</b> 11     <b>I'm sorry, go ahead.</b></p> <p>12      A. Is the SOUND any better now?</p> <p>13      <b>Q. It's a little better. Our --</b></p> <p>14      MS. McCLANAHAN: Let me just ask, are we 15     completely turned up so far as volume?</p> <p>16      MS. HAMMOCK: Yes.</p> <p>17      <b>Q. (BY MS. McCLANAHAN) Okay. We're as far up</b> 18     <b>as we can get, so I appreciate you speaking loudly, I</b> 19     <b>guess.</b></p> <p>20      <b>So it's your opinion that clay and shale</b> 21     <b>that was excavated from the Osage mineral estate by</b> 22     <b>Osage Wind had no value because there was no</b> 23     <b>processing facility to make them valuable; is that</b> 24     <b>right?</b></p> <p>25      MR. RAY: Object to the form.</p>
<p>1 speak as loud as you can.</p> <p>2       <b>I believe the upshot of what you just said</b> 3     <b>was that you don't believe that they followed this</b> 4     <b>regulation?</b></p> <p>5       A. What I said is that it's -- the limestone 6     leases -- I'm sorry, I'm going to scoot over one 7     chair.</p> <p>8       <b>Q. Okay.</b></p> <p>9       A. Just so that I'm closer to the microphone.</p> <p>10      Maybe that will make a difference.</p> <p>11      <b>Q. Okay.</b></p> <p>12      A. <b>So what I just said is that the limestone</b> 13     <b>leases that I reviewed that I have formed the basis of</b> 14     <b>my .52 cents per ton to set the value of the limestone</b> 15     <b>were not a 10 percent of value type lease. So I do</b> 16     <b>not know what else the OMC does that diverges or is</b> 17     <b>not consistent with this regulation.</b></p> <p>18      <b>Q. Do you have any reason to disagree that</b> 19     <b>214.10(d) would apply if someone sought to mine clay</b> 20     <b>and shale from the mineral estate here?</b></p> <p>21      MR. RAY: Object to the form.</p> <p>22      THE WITNESS: As noted, the OMC did not 23     appear to follow it, so there probably was good reason 24     for that.</p> <p>25      <b>Q. (BY MS. McCLANAHAN) Do you think it would</b></p>	<p>Page 35</p> <p>1 THE WITNESS: So the value of a mineral is 2 only when you can sell it. And if they were able to 3 sell the clay or shale for other purposes, then it 4 could have had value. But from the standpoint of a 5 material amount of volume, in my opinion there is not 6 a market for clay and shale that is extensive enough 7 to drive those as an important point of value.</p> <p>8       <b>Q. (BY MS. McCLANAHAN) But you understand, as</b> 9     <b>you read 214.10(d), that that regulation does not</b> 10     <b>value minerals according to whether there is nearby</b> 11     <b>demand or nearby processing; correct?</b></p> <p>12      MR. RAY: Object to the form.</p> <p>13      THE WITNESS: No, you're actually incorrect.</p> <p>14      That regulation values minerals when they're sold. If 15     there is no nearby processing, or there is no nearby 16     marketing and they are not sold, then they carry zero 17     value.</p> <p>18      <b>Q. (BY MS. McCLANAHAN) Well, you would agree</b> 19     <b>that the operative word, I guess, that we're both</b> 20     <b>looking at is the word "nearest"?</b></p> <p>21      A. No. The operative word here is "market." 22      So the mineral is only worth what you can sell it for. 23      If you cannot sell that mineral, then it's worth zero.</p> <p>24      <b>Q. Well, the regulation reads, For substances</b> 25     <b>other than, gold, silver, copper, lead, zinc, coal,</b></p>